

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
v.)	Cr. No. 22-146
)	
JAMES SMELKO)	

Order

On October 26, 2023, the Court held a pretrial conference to address, in part, Defendant's Motions in Limine seeking exclusion at trial of the government's exhibits containing depictions of minors involved in sexually explicit conduct and exclusion at trial of in-court argument, testimony, or written statements describing the depictions of sexually explicit conduct. *See* Mot. in Limine, ECF No. 67 and Mot. in Limine, ECF No. 69. At the conference, the government presented to the Court and the defense, the images intended to be admitted into evidence at trial.¹ The government explained in detail its plan to present and describe the images. The government intends to introduce cropped images, that may also be sanitized for the jury's review. An FBI Special Agent will testify as to the content of the complete image (as well as other images), using sanitized, clinical, language. The government also intends to present actual images of the identifiable minors so that the jury can compare such images with images of sexual exploitation depicting the same identifiable minor, in order to show that the sexual exploitation image depicting the identifiable minor is not an original image.

After review and consideration of the images intended to be introduced at trial, along with the government's explanation of its plan to crop and sanitize some images and provide

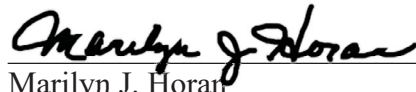
¹ Limited argument on the Motions was heard on October 16, 2023, but the relevant images were not available at that time.

clinical descriptions of such images, the Court finds that the images are relevant, and that their probative value is not outweighed by any of the prejudicial risk presented by virtue of displaying those to the jury. All such images are relevant and appropriate for the charges in this case. Therefore, the Motion in Limine (ECF No. 67) will be denied.

As to the descriptions of depictions of sexually explicit conduct, the government's offer that such descriptions will be clinical in nature and non-inflammatory, the Court finds the government's proffer to be appropriate and said descriptions will be permitted at trial. The Motion in Limine (ECF No. 69) will be denied, without prejudice to Defendant raising an objection to the actual descriptions at trial.

AND NOW, this 13th day of November 2023, Defendant James Smelko's Motion in Limine, filed at ECF No. 67, is DENIED.

IT IS FURTHER ORDERED that James Smelko's Motion in Limine, filed at ECF No. 69, is DNEIED, without prejudice to Defendant raising an objection to the actual descriptions at trial.


Marilyn J. Horan
United States District Judge